

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA

§

§

vs.

§

§

FRANK MOLINA

§

1:18-cr-141-RP

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE**

Before the Court is the petition of the United States Probation Office recommending that the Court revoke Defendant's term of supervised release. Dkt. 45. The undersigned Magistrate Judge submits this Report and Recommendation to the District Court, pursuant to 28 U.S.C. § 636(b), 18 U.S.C. § 3401(i), and Rule 1(d) of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas.

I. Procedural Background

On September 7, 2018, Defendant Frank Molina was sentenced to thirty months imprisonment, followed by a three-year term of supervised release, for Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2). Dkt. 34. His supervision commenced on October 28, 2019, and the Probation Office filed the Petition for Warrant or Summons for Offender under Supervision ("Petition") on March 17, 2021. Dkt. 45.

In the Petition, the Probation Office alleges that Mr. Molina submitted to a random drug test which returned positive for marijuana on March 15, 2021; failed to attend drug treatment

counseling sessions on January 13, 2021 and February 24, 2021; and has made no payments toward his \$100 special assessment, in violation of the following conditions of his Supervised Release:

- **Mandatory Condition No. 3:** “The defendant shall refrain from any unlawful use of a controlled substance.”
- **Special Condition:** “The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program may include testing and examination during and after program completion to determine if the defendant has reverted to the use of drugs. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant shall pay the costs of such treatment if financially able.”
- **Mandatory Condition No. 8:** “The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.”

Id. at 2. A preliminary and final revocation hearing is set for 10 a.m. on April 7, 2021, before the undersigned Magistrate Judge. Dkt. 55. Mr. Molina waived his right to a preliminary revocation hearing. Dkt. 56.

II. Analysis

Pursuant to Fed. R. Crim. P. 32.1(b)(2) and (c), a person may waive a revocation hearing, and a hearing before modifying the conditions of probation or supervised release is not required if: (A) the person waives the hearing; or (B) the relief sought is favorable to the person and does not extend the term of supervised release; and (C) an attorney for the government has received notice of the relief sought, has had reasonable opportunity to object, and has not done so.

On March 31, 2021, the parties submitted an Agreed Recommended Disposition in Final Revocation Proceeding and Waiver of Defendant’s Appearance and Waiver of Hearing (“Agreed Recommended Disposition”). Dkt. 57. The Agreed Recommended Disposition states that

Mr. Molina wishes to plead true to the violations alleged in the Petition. *Id.* at 1. The filing further states that Mr. Molina's counsel has reviewed the Petition and the Adjustment Summary prepared by the Probation Office with Mr. Molina and advised him of his right to a preliminary and final revocation hearing, including his rights to be physically present, and his rights under Fed. R. Crim. P. 32.1(b)(2) to counsel, to the disclosure of the evidence against him, and to make a statement and present mitigating information. *Id.* at 1-2. The Agreed Recommended Disposition states that, after consultation with counsel, Mr. Molina wishes to waive his right to be present at his revocation hearing and also wishes to waive the hearing. *Id.* at 2. The agreed filing further states:

The parties have conferred in this case and agree that an appropriate resolution of this matter would be to accept Mr. Molina's plea of true to the alleged violations of Mandatory Condition No. 3, the described Special Condition, and Mandatory Condition No. 8; revoke Mr. Molina's term of supervised release; sentence Mr. Molina to a period of incarceration of four months (4 months); and find that no supervised release should follow. The agreement between the parties was made after consultation with the United States Probation Office. This disposition is favorable to Mr. Molina, and the Government does not object it.

Id.

III. Findings of the Court

Based on the parties' agreement and the Agreed Recommended Disposition, as well as Mr. Molina's plea of "True" to the violations of Mandatory Condition No. 3, the Special Condition listed above to participate in a substance abuse treatment program, and Mandatory Condition No. 8, the Court finds that Mr. Molina violated conditions of his supervised release by unlawfully using a controlled substance, failing to participate in a substance abuse treatment program, and failing to pay his \$100 special assessment.

IV. Recommendations

Based on the agreement of the Government and the Defendant (Dkt. 40), the Court **RECOMMENDS** that Mr. Molina's supervised release be **REVOKED** and that he be sentenced to four (4) months incarceration, with no supervised release to follow.

V. Objections

Because this is an agreed disposition, there will be no objections to this Report and Recommendation, and the matter is ripe for the District Court to act on it.

SIGNED on March 31, 2021.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE